

2003-137

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February 4, 2004

Mr. Thomas M. Dorman  
Executive Director  
Kentucky Public Service Commission  
PO Box 615  
211 Sower Boulevard  
Frankfort, KY 40602-0615

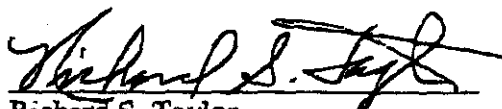
RE: Kentucky Utilities Revised Special Contract With North American Stainless, L.P.

Dear Mr. Dorman:

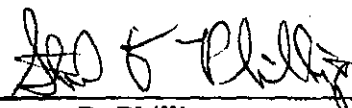
Please be advised that the parties to this proceeding have filed a Joint Stipulation to certain facts; therefore, it should not be necessary for the parties to file testimony as to the facts of this case. North American Stainless and Kentucky Utilities request the requirement of filing testimony be waived by the Commission.

Thank you for your consideration.

Agreed To:



Richard S. Taylor  
Attorney for North American Stainless



Steven D. Phillips  
Attorney for Kentucky Utilities

Cc: Nathaniel K. Adams  
James W. Brew  
William H. Jones  
Linda S. Portasik

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>KENTUCKY UTILITIES COMPANY REVISED</b>	<b>)</b>	
<b>SPECIAL CONTRACT WITH NORTH AMERICAN</b>	<b>)</b>	<b>CASE NO. 2003-00137</b>
<b>STAINLESS, L.P.</b>	<b>)</b>	

**JOINT STIPULATION BETWEEN KENTUCKY UTILITIES COMPANY AND**  
**NORTH AMERICAN STAINLESS, L.P.**

\* \* \* \* \*

COMES NOW, Kentucky Utilities Company (KU) and North American Stainless, L.P.  
(NAS) and stipulate certain facts as follows:

A. On March 31, 2003, KU filed a revised special contract for electric service to NAS for use at its steel mill melt shop. The revisions addressed three issues; however, only one of those issues is in controversy here. The issue in controversy is the re-classification of a small portion of NAS' load as firm.

B. The effective date stated in the revised contract was June 1, 2002. Following June 1, 2002 and until the Commission issued its order denying retroactive approval on April 28, 2003, KU billed NAS using a larger firm demand component (2000 kw) than was set forth in the revised contract (1800 kw). KU's position is that KU advised NAS that this billing would be done on an estimated basis with the intention of ultimately completing a "true-up" to the extent that the final revised contract, as approved by the Commission, differed. NAS's position is that it did not understand that KU's estimated billing was done with the intention of ultimately

completing such a “true-up”. In light of the appeal by NAS of the original Commission ruling, this “true-up” has not been completed at this time.

C. NAS is a Spanish owned Company.

D. KU and NAS substantially agreed on the terms that were included in the revised contract on or about February 28, 2002, and KU began billing NAS on an estimated basis as described above on June 1, 2002. However, other potential terms were also discussed, and these discussions delayed execution of the revised contract until February 25, 2003. By Order dated April 28, 2002, the Commission denied the proposed effective date of the revised special contract and established an effective date of April 28, 2003.

E. Although the revised contract contained a provision that conditioned its effectiveness upon Commission approval and KU maintains that it had advised NAS that the Commission might not approve an effective date that preceded a Commission order approving the contract revisions, NAS maintains that it believed the Commission possessed authority to approve a contract revision containing an effective date mutually agreed by the parties that did not affect contract billings rendered prior to that effective date. NAS also maintains that it did not believe the theory of retroactive rate making or the theory of the filed rate doctrine would preclude Commission action effectuating what NAS believed was the intent of the parties, and incorrectly assumed that since the parties had substantially agreed to the new rates that the new rates would be approved. NAS maintains that it did not realize its mistake until the Commission issued its denial order on April 28, 2003, and that if it had understood the legal issue raised by the filed

rate doctrine, it would have joined in the application seeking approval of the revised special contract immediately after the oral agreement was consummated. It is NAS' position that (i) if the Commission does not reconsider its Order, it will have detrimental effect on NAS, and that (ii) NAS did not realize the Commission would not approve the revised special contract.

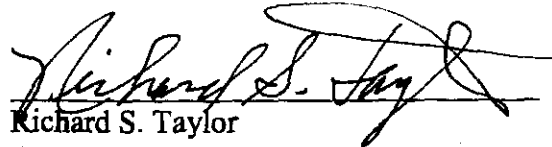
F. At the time the original special contract was entered, NAS requested only interruptible service. However, after the melt shop became operational, NAS decided it preferred a small amount of firm power in order to limit the risk of damage to its equipment arising from human error and that it was more prudent to have a small amount of firm supply in order that it would not have to de-energize certain equipment. NAS decided that a partially firm supply would be more prudent than simply having all interruptible service. The revision did not change any rate in the original special contract; it merely changed the level of load at which NAS was assessed a curtailment non-compliance penalty charge. Although an effective date of June 1, 2002 would have allowed KU to realize additional revenue with respect to the period of June 1, 2002 through March 31, 2003 because the small portion of uninterruptible power would have been furnished at a higher firm rate rather than a lower interruptible rate, such additional revenue would have been less than the revenue that KU would have lost with respect to the same period in light of the reduced non-curtailment penalties that would have been paid by NAS.

G. Subject to Commission approval, NAS and KU agreed conceptually to this revision as soon as the issue first arose in June 2002, and that it was their desire in negotiating the contract

revision that the Commission give effect to the contract changes as of the effective date stated therein.

Stipulation Agreed By:

By:

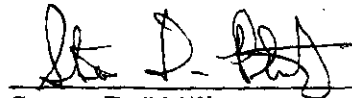


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